IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.165 of 1993

Decided on : December 6, 2007

State of H.P. **…Appellant.**

Versus

Harbilas and another **…Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Som Dutt Vasudeva, Additional Advocate General

For the Respondents : None.

Surjit Singh, Judge(Oral)

Respondents Harbilas and Mohammed Shaffi were charged with and tried for offences punishable under Sections 458 and 382 IPC, for allegedly breaking into the house of Smt. Punni Devi and extorting one camera, one locket of silver, one pair of Panjeb of silver, one woolen coat, woolen sheets, currency notes of Rs.1,000/-, coins of Rs.150/-, one golden nose-pin filled with seven gems and one torch, on the night intervening 18th and 19th March, 1987.

2. Trial Court convicted the respondents for offence punishable under Section 382 IPC and sentenced them to undergo rigorous imprisonment for 1½ year and fine of Rs.500/- each. Respondents went in appeal to the Sessions Court. Accepting the appeal, the Sessions Court acquitted the respondents. State has come in appeal to this Court against the judgment of the Sessions Court.

Whether reporters of the local papers may be allowed to see the judgment?

3. We have perused the record and heard the learned Additional Advocate General.

4. Prosecution sought to connect the two respondents with the commission of the offence by proving certain disclosure statements made by them, leading to the recovery of some of the stolen items. Sessions Court has disbelieved the evidence pertaining to the alleged disclosure statements, under Section 27 of the Evidence Act, and recovery pursuant to those statements.

5. As per prosecution case, respondent Harbilas made a statement on 6th May, 1987 to PW-16 HC Kirpa Ram that he had sold one pair of Panjeb of silver, one locket of silver and one golden nose-pin filled with seven gems to a goldsmith of Sabzi Mandi Chamba. That statement was allegedly made by respondent Harbilas in the presence of PW-1 Bains Ram and one Gian Chand. Prosecution did not examine Gian Chand. PW-1 Bains Ram though stated that respondent Harbilas made a statement that he had sold some items to a goldsmith at Chamba, his statement appears to be incorrect on the face of it because, according to him, the statement was made by respondent Harbilas in the morning at 8.45 on 6th May, 1987, when he was going to his place of work, while according to the statement of PW-16 HC Kripa Ram, who recorded the statement, respondents had been arrested on 6th May, 1987 in the evening and thereafter he made the disclosure statement. Furthermore, what was recovered, pursuant to the aforesaid alleged statement of respondent Harbilas, were not the items of jewellery, which had been stolen and allegedly sold by respondent Harbilas to the goldsmith.

6. As regards the second respondent, Mohammed Shaffi, the prosecution story is that he made a statement leading to the discovery

of one dagger, one torch and one woolen coat. Nobody identified the torch and the woolen coat to belong to Smt. Punni Devi against whom the offence of extortion had been committed. Dagger was also not identified to be the weapon, which was allegedly used to intimidate Smt. Punni Devi, the victim of the offence. Moreover, the two witnesses of the alleged disclosure statement made by this respondent, namely PW-6 Saki Mohammed and PW-7 Punu Ram, did not support the prosecution version.

7. It may not be out of place to mention here that the alleged thieves entered the house of Smt. Punni Devi with muffled faces during the night when there was no light in the house. No test identification parade was held.

8. In view of the abovestated position, we see no merit in the appeal. The same is, therefore, dismissed.

(Surjit Singh), J

December 6, 2007(sd) **(Surinder Singh), J**